

AMENDED IN ASSEMBLY MARCH 25, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 457

**Introduced by Assembly Member Monning
(Coauthor: Assembly Member Emmerson)**

February 24, 2009

~~An act to repeal and add Section 3144 of the Civil Code, relating to~~
An act to amend Sections 3084 and 3146 of the Civil Code, relating to
liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 457, as amended, Monning. Liens.

The California Constitution gives workers the right to a mechanic's lien for the value of labor and materials provided for the improvement of real property, and authorizes the Legislature to provide for the speedy and efficient enforcement of these liens. Existing law defines claim of lien in this regard, requiring it to contain specified information. Existing law provides that a lien claimant, after filing of the complaint to enforce the lien in the proper court, may record in the office of the county recorder where the property is located a notice of pending proceedings, and from the time of the recording a purchaser or encumbrancer of the property is deemed to have constructive notice of the pendency of the action.

This bill would provide that the definition of "claim of lien" is also the definition of "mechanic's lien" and would include within this definition a Notice of Mechanic's Lien, which would contain specified information regarding the legal effect of the lien. The bill would require the mechanic's lien and the Notice of Mechanic's Lien to be served, as specified, on the owner or reputed owner of the property, or on the

construction lender or the original contractor if those parties cannot be served. The bill would require a proof of service affidavit to be completed in a specified form and signed by the person serving the Notice of Mechanic's Lien, and this form would be included as part of the mechanic's lien or claim of lien. The bill would provide that a failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as required, would cause the mechanic's lien to be unenforceable as a matter of law.

The bill would also revise the permissive provisions regarding the recording of the complaint to enforce the lien, as described above, to make them mandatory. The bill would make also make correctional, style, and conforming changes.

~~Existing law provides that a lien for a private work of improvement does not bind any property for more than 90 days after the recording of the claim of lien unless an action to foreclose the lien is commenced within that time in a proper court. The lien may continue in force, however, if credit is given and notice of the credit is recorded in the office of the county recorder after the recording of the lien and prior to the expiration of the 90-day period, but not longer than one year from the time of completion of the work of improvement.~~

~~This bill would revise and clarify those provisions. The bill would instead require the claimant to commence an action to enforce a lien within 90 days after recordation of the claim of lien and to record a notice of the pendency of the action, as specified, within 110 days after recordation of the claim of lien. If the claimant fails to commence the action and record the notice within the time required, the bill would provide that the claim of lien expires and is unenforceable. These provisions would not apply if the claimant and owner agree to extend credit and notice regarding the facts and terms of the extension of credit is recorded either within 90 days after recordation of the claim of lien or more than 90 days after recordation but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. Under those circumstances, the bill would provide that the lien expires and is unenforceable if the claimant does not commence an action to enforce the lien and record a notice of the pendency of the action within 90 days after the expiration of the credit, but, in no case, later than one year after completion of the work of improvement.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 3084 of the Civil Code is amended to*
2 *read:*

3 3084. (a) “Claim of lien” or “*mechanic’s lien*” means a written
4 statement, signed and verified by the claimant or by the claimant’s
5 agent, containing all of the following:

6 (1) A statement of the claimant’s demand after deducting all
7 just credits and offsets.

8 (2) The name of the owner or reputed owner, if known.

9 (3) A general statement of the kind of labor, services, equipment,
10 or materials furnished by the claimant.

11 (4) The name of the person by whom the claimant was employed
12 or to whom the claimant furnished the labor, services, equipment,
13 or materials.

14 (5) A description of the site sufficient for identification.

15 (6) *An affidavit completed and signed by the person serving the*
16 *Notice of Mechanic’s Lien pursuant to paragraph (7) in the*
17 *following form:*

18
19 *PROOF OF SERVICE AFFIDAVIT*

20 *I, (insert name of person making service), declare that I served*
21 *a copy of the mechanic’s lien by registered mail, certified mail,*
22 *or first-class mail, evidenced by a certificate of mailing, postage*
23 *prepaid, addressed to the following owner or reputed owner of*
24 *the property (insert name and title of person served) at the*
25 *f o l l o w i n g*
26 *address_____*

27 *on this date:_____.*

28 *Signed at_____*, *on this*
29 *date_____.*

30 *(Signature of person making service)*

31
32 (7) *The following statement, printed in at least 10-point boldface*
33 *type. The letters of the last sentence shall be printed in uppercase*
34 *type, excepting the Internet Web site address of the Contractors’*
35 *State License Board, which shall be printed in lowercase type:*

36
37 *NOTICE OF MECHANIC’S LIEN*
38 *ATTENTION!*

1 Upon the recording of the enclosed MECHANIC'S LIEN with
2 the county recorder's office of the county where the property is
3 located, your property is subject to the filing of a legal action
4 seeking a court-ordered foreclosure sale of the real property on
5 which the lien has been recorded. That legal action must be filed
6 with the court no later than 90 days after the date the mechanic's
7 lien is recorded.

8 The party identified in the mechanic's lien may have provided
9 labor or materials for improvements to your property and may not
10 have been paid for these items. You are receiving this notice
11 because it is a required step in filing a mechanic's lien foreclosure
12 action against your property. The foreclosure action will seek a
13 sale of your property in order to pay for unpaid labor, materials,
14 or improvements provided to your property. This may affect your
15 ability to borrow against, refinance, or sell the property until the
16 mechanic's lien is released.

17 BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY
18 WISH TO CONTACT AN ATTORNEY IMMEDIATELY, OR FOR
19 MORE INFORMATION ON MECHANIC'S LIENS GO TO THE
20 CONTRACTORS' STATE LICENSE BOARD WEB SITE AT
21 www.cslb.ca.gov.

22
23 (b) A mechanic's lien or claim of lien in otherwise proper form,
24 verified and containing the information required by this section
25 shall be accepted by the recorder for recording and shall be deemed
26 duly recorded without acknowledgment.

27 (c) (1) The mechanic's lien and the Notice of Mechanic's Lien
28 described in this section shall be served as follows:

29 (A) For an owner or reputed owner to be notified who resides
30 in or outside this state, by registered mail, certified mail, or
31 first-class mail, evidenced by a certificate of mailing, postage
32 prepaid, addressed to the owner or reputed owner at the owner's
33 or reputed owner's residence or place of business address or at
34 the address shown by the building permit on file with the authority
35 issuing a building permit for the work, or as otherwise provided
36 in subdivision (j) of Section 3097.

37 (B) If the owner or reputed owner cannot be served by this
38 method, then the notice may be given by registered mail, certified
39 mail, or first-class mail, evidenced by a certificate of mailing,

1 *postage prepaid, addressed to the construction lender or to the*
2 *original contractor.*

3 (2) *Service by registered mail, certified mail, or first-class mail,*
4 *evidenced by a certificate of mailing, postage prepaid, is complete*
5 *at the time of the deposit of that first-class certified or registered*
6 *mail.*

7 (d) *Failure to serve the mechanic's lien, including the Notice*
8 *of Mechanic's Lien, as prescribed by this section, shall cause the*
9 *mechanic's lien to be unenforceable as a matter of law.*

10 SEC. 2. *Section 3146 of the Civil Code is amended to read:*

11 3146. *After the filing of the complaint in the proper court to*
12 *foreclose on the mechanic's lien, the plaintiff may shall record in*
13 *the office of the county recorder of the county, or of the several*
14 *counties in which the property is situated, a notice of the pendency*
15 *of such the proceedings, as provided in Section 409 Title 4.5*
16 *(commencing with Section 405) of Part 2 of the Code of Civil*
17 *Procedure on or before 20 days after the filing of the mechanic's*
18 *lien foreclosure action. Only from the time of recording such that*
19 *notice shall a purchaser or encumbrancer of the property affected*
20 *thereby be deemed to have constructive notice of the pendency of*
21 *the action, and in that event only if of its pendency against parties*
22 *designated by their real names.*

23 SEC. 3. *The amendments proposed by this act shall be operative*
24 *on January 1, 2011.*

25 SECTION 1. ~~Section 3144 of the Civil Code is repealed.~~

26 SEC. 2. ~~Section 3144 is added to the Civil Code, to read:~~

27 3144. (a) ~~The claimant shall commence an action to enforce~~
28 ~~a lien within 90 days after recordation of the claim of lien and shall~~
29 ~~record a notice of the pendency of the action under Title 4.5~~
30 ~~(commencing with Section 405) of Part 2 of the Code of Civil~~
31 ~~Procedure within 110 days after recordation of the claim of lien.~~
32 ~~If the claimant does not commence an action and record notice of~~
33 ~~the pendency of the action within the time provided in this~~
34 ~~subdivision, the claim of lien expires and is unenforceable.~~

35 (b) ~~Subdivision (a) does not apply if the claimant and owner~~
36 ~~agree to extend credit, and notice of the fact and terms of the~~
37 ~~extension of credit is recorded (1) within 90 days after recordation~~
38 ~~of the claim of lien or (2) more than 90 days after recordation of~~
39 ~~the claim of lien but before a purchaser or encumbrancer for value~~
40 ~~and in good faith acquires rights in the property. In that event the~~

1 claimant shall commence an action to enforce the lien and record
2 a notice of the pendency of the action within 90 days after the
3 expiration of the credit, but in no case later than one year after
4 completion of the work of improvement. If the claimant does not
5 commence an action and record a notice of the pendency of the
6 action within the time provided in this subdivision, the claim of
7 lien expires and is unenforceable.

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